

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

MARK KIDD and BUFFIE KIDD

PLAINTIFFS

v.

CIVIL ACTION NO.: 1:08cv1443-LG-RHW

**STATE FARM FIRE AND CASUALTY
CO., and JOHN DOES 1-10.**

DEFENDANTS

**STATE FARM FIRE AND CASUALTY COMPANY'S
MOTION TO QUASH JURY DEMAND**

NOW INTO COURT, through undersigned counsel, comes Defendant, State Farm Fire and Casualty Company, ("State Farm"), a Write-Your-Own ("WYO") Program carrier participating in the U.S. Government's National Flood Insurance Program ("NFIP"), appearing herein its "fiduciary"¹ capacity as the "fiscal agent of the United States,"² and moves this Court to quash Plaintiffs' jury demand pursuant to FED.R.CIV.P. Rule 39 as to all claims by Plaintiffs against State Farm on the following grounds: (1) the Seventh Amendment right to a jury trial does not apply; (2) the funds at issue in this matter are U.S. Treasury funds and not the funds of State Farm, and nowhere did Congress affirmatively and unambiguously grant the right to a jury trial; (3) the National Flood Insurance Act of 1968 ("NFIA") as amended³ (which must be strictly construed and enforced) as well as the controlling federal statutory⁴ and regulatory laws do not allow for jury trials in matters involving NFIP; and (4) Plaintiffs have asserted a breach of contract claim against State Farm, and extra-contractual claims for interest, attorney's fees and statutory penalties pursuant to La. R.S. 22:658 and 22:1220. As the Standard Flood Insurance Policy ("SFIP") is itself a federal law, codified and found at 44 C.F.R. Part 61, Appendix A(1),

¹ 44 C.F.R. §62.23(f).

² 42 U.S.C. §4071(a)(1); *Sanz v. U.S. Security Ins. Co.*, 328 F.3d 1314, 1316 (11th Cir. 2003). *See also, Gowland v. Aetna*, 143 F.3d 951, 953 (5th Cir. 1998).

³ 42 U.S.C. §4001, *et seq.*

⁴ 44 C.F.R. Pt. 59, *et seq.*

(2004 edition), the question as to whether the SFIP was breached is a question of law, not fact, for the Court to decide. There is nothing for a jury to address. As the Court is well aware, the SFIP, which itself is a codified federal regulation found at 44 C.F.R. Pt. 61, Appendix A(1) is to be interpreted only by the Court, as coverage under the SFIP or the determination of a breach of the terms of the SFIP is a matter of law, not fact, for the Court to decide. As such, the request for a jury should be denied.

WHEREFORE, PREMISES CONSIDERED, Defendant, State Farm Fire and Casualty Company, prays that this Court will issue an Order quashing the Plaintiffs' jury demand for the reasons set forth in the accompanying Memorandum in Support of this Motion.

RESPECTFULLY SUBMITTED, this the 20th day of October, 2009.

**STATE FARM FIRE & CASUALTY
COMPANY, Defendant**

BY: NIELSEN LAW FIRM, L.L.C.

/s/ Kristie Luke Mouney

Kristie Luke Mouney, La. S.B. #29958

Kim Tran Britt, La.S.B. #24896

Gerald J. Nielsen, (T.A) La. S.B. #17078

3838 North Causeway Blvd., Suite 2850

Metairie, Louisiana 70002

T: (504) 837-2500; F: (504) 832-9165

Email: kluke@nielsenlawfirm.com

Sherrie L. Moore, MSB No. 10723

Michael C. McCabe, Jr., MSB No. 101548

Allen, Cobb, Hood & Atkinson, P.A.

One Hancock Plaza, Suite 1212

Post Office Drawer 4108

Gulfport, MS 39502-4108

Telephone: (228) 864-4011

Facsimile: (228) 864-4852

CERTIFICATE OF SERVICE

This is to certify that the undersigned attorney for Allen, Cobb, Hood & Atkinson, P.A. has this day served a copy of the above and foregoing ***MOTION TO QUASH JURY DEMAND*** upon counsel of record and other interested persons noted below via electronic service unless otherwise indicated as follows:

ATTORNEY FOR PLAINTIFFS:

**John Hawkins, Esq.
Edward Gibson, Esq.
BARIA, HAWKINS & STRACENER, PLLC
544 Main Street
Bay St. Louis, MS 39520**

**Brehm T. Bell, Esq.
544 Main Street
Bay St. Louis, MS 39520**

SO CERTIFIED, this the 20th day of October, 2009.

s/ Michael McCabe

MICHAEL C. MCCABE, JR.

**ALLEN, COBB, HOOD & ATKINSON, P.A.
Attorneys at Law
One Hancock Plaza, Ste. 1212
Post Office Drawer 4108
Gulfport, MS 39502
Tele: (228) 864-4011
Fax : (228) 864-4852**